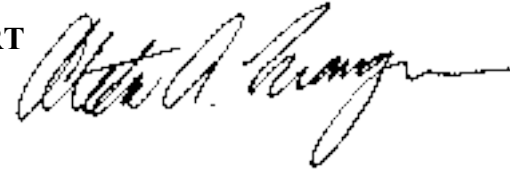


IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION



UNITED STATES OF AMERICA)
)
v.) **CASE NO. 3:10-00278**
)
DAVID A. MARTIN) **JUDGE TRAUGER**

DEFENDANT'S FIFTH MOTION TO CONTINUE THE TRIAL DATE

Defendant David A. Martin, by and through undersigned counsel, does hereby move the Court to continue the trial date which is presently set for **Tuesday, January 15, 2013 at 9:00 a.m.** (Docket Entry No. 62) Undersigned counsel met with Mr. Martin on December 13, 2012 and discussed the issues raised in this motion to continue. Mr. Martin requested that undersigned counsel file the motion to continue the trial. Attached as **Exhibit A** is a waiver of the Speedy Trial Act signed by Mr. Martin, along with an explanation as to the bases of the motion.

As has been stated in previous filings, undersigned counsel was appointed to represent Mr. Martin on or about August 23, 2011. (Docket Entry No. 33) Mr. Martin, who is charged with illegal entry after being convicted of an aggravated felony in violation of 8 U.S.C. § 1326(a), has raised an issue the use of a 1997 Louisiana state court drug conviction as the requisite "aggravated felony" to support a conviction under § 1326(a).

As was brought to the Court's attention in previous motions (Docket Entry Nos. 34 & 61), Mr. Martin alleges ineffective assistance of counsel as to the manner in which he entered a plea of guilty in August 1997 to the Louisiana drug charge, and more specifically, whether there was a violation based on *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). There is a split among the circuit